TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 796. 374

ALEXANDER S. HOOE, JUNIOR, EMILIE M. HOOE, HARRIET V. HOOE, AND JOSEPHINE R. CHASE (BORN HOOE), PLAINTIFFS IN ERROR,

vs.

HUGH JAMIESON, HUGH P. JAMIESON, L. A. SQUIRES, ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

FILED NOVEMBER 7, 1895.

(16,086.)

(16,086.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 796.

ALEXANDER S. HOOE, JUNIOR, EMILIE M. HOOE, HARRIET V. HOOE, AND JOSEPHINE R. CHASE (BORN HOOE), PLAINTIFFS IN ERROR,

vs.

HUGH JAMIESON, HUGH P. JAMIESON, L. A. SQUIRES, ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

INDEX.

	Original.	Print.
Judgment	1	1
Petition for writ of error	4	2
Judge's certificate of question of jurisdiction	5	3
Assignment of errors	8	4
Citation	9	6
Clerk's certificate	11	7
Writ of error	12	8
Stipulation in No. 795 in regard to printing record	14	10
Stipulation in No. 796 in regard to printing record	17	11

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 12, 1896.

1 Circuit Court of the United States for the Western District of Wisconsin.

ALEXANDER S. HOOE *et al.*, Plaintiffs,
vs.
HUGH JAMIESON *et al.*, Defendants.

The motion to dismiss this action having been duly made on the ground that it appears from the allegation of the plaintiffs' complaint that the plaintiffs, each and all, resided at the time of the commencement of the action and were citizens of the city of Washington, in the District of Columbia, and that therefore the action does not involve any controversy between citizens of different States so as to give this court jurisdiction thereof:

It is ordered that the said action be dismissed for want of jurisdiction unless the plaintiffs within five days from this date so amend their said complaint as to allege the necessary jurisdictional facts, and that in case such amendment shall be made according to the terms of this order, that then this motion will be overruled.

And it further now appearing to this court that said complaint has not been so amended, and that no amendment is or has been proposed by said plaintiffs, such as would obviate such defect in the allegation of the complaint necessary to confer jurisdiction upon this court, the plaintiffs only offering to amend so as to allege that one of the plaintiffs is a citizen of the State of Minnesota and all the others citizens of the District of Columbia, it is further ordered and adjudged that the said suit be, and the same is hereby, dis-
2 missed for want of jurisdiction in this court, with costs to be taxed, & which are taxed at the sum of five dollars; to which ruling and order the plaintiffs' attorneys now take proper exception, which is allowed.

By the court:

R. BUNN, *Judge.*

August 13, 1895.

3 [Endorsed:] "U.S. circuit court, W. dist. Wis. Alex. S. Hooe *et al. vs.* Hugh Jamieson *et al.* Judgment of dismissal. Filed Aug. 13, 1895. F. M. Stewart, clerk. Bushnell, Rogers & Hall, pl'ffs' att'ys."

4 United States Circuit Court, Western District of Wisconsin.

ALEXANDER S. HOOE, JR., EMILIE M. HOOE, HARRIET V. HOOE, and JOSEPHINE R. CHASE (Born HOOE), Plaintiffs in Error,
vs.
HUGH JAMIESON, HUGH P. JAMIESON, L. A. SQUIRES, C. W. Delaney, Robert Robertson, William Wheeler, Elliot C. Scott, Charles Deming, A. L. Wood, C. H. Butler, Stephen Tillotson, Mariah Tillotson, Henry L. Butler, Sarah J. Johnson, Lewis Edmister, Theresa Tillotson, Widow, Now Remarried, Whose Last

Name is Unknown to the Plaintiffs; Ella L. Rose, A. D. Rose, Sarah B. Tillotson, J. F. Bohling, Mary J. Bohling, William M. Shanks, Phila M. Robinson, Agnes M. Marshall, Thomas W. Stanton, Melissa L. Knight, James Cordiner, Edgar E. Hinckson, James Thompson, Joseph Townsand, as Executor of the Last Will of Eli Norton, Deceased; Jane Ida Norton and All the Devisees and Heirs-at-law of Eli Norton, Deceased, Whose Names are Unknown to the Plaintiffs; Edward P. Stebbins, John Wilson, William McDonald, John McQueen, George Stephens, Hannah Buck, John Tomlinson, John Tomlinson, Jr., Charles Luce, George L. Francis, W. H. Evarts, William Fuller, William Douglas, Sarah Turner, Phebe M. Robinson, J. W. Robinson, W. G. Robinson, Deo Vernoy, A. Ball, H. L. Butler, Herbert Johnson, August Johnson, Thomas Stanton, J. B. Galloway, Hugh Sloan, Mrs. Samuel Murray, Margaret Murray, Frank Stebbins, Ole Salter, George L. Swartz, L. L. Phinney, Stelmar Phinney, Andrew Skuttle, J. J. Wilson, H. C. Stanton, Rhoda W. Stanton, Amy R. Thomas, Robert Tomlinson, Sarah A. Tomlinson, William O. Hudson, Elizabeth Hudson, Oliver C. Luther, Mary E. Wood, Frederick W. Woolstone, Axie Bull, John Campbell, Mary Jane Rose, Sarah McCredie, John McKenzie, Fannie H. Green, Thomas Egan, L. Lobdell, Mary McKenzie, Mary A. Barnes, Peter McKenzie, William K. McKenzie, John B. McKenzie, Christian McKenzie, Kenneth A. McKenzie, Jennette I. McKenzie, Mrs. William McDonald, William McDonald, Jr., P. W. McKenzie, and All the Heirs-at-law and Devisees of William McDonald, Deceased, Whose Names are Unknown to the Plaintiffs; Otto Komnitsch, Medora Thompson, James Thompson, Jr., John Thompson, Dorcas Thompson, and All the Heirs-at-law and Devisees of James Thompson, Deceased, Whose Names are Unknown to the Plaintiffs; The Poynette Presbyterial Academy and W. T. Parry, E. Fred. Russell, James Hall, W. L. Green, and Thomas Sanderson, Its Trustees; Daisy Norton, Maud Norton, Sadie Norton, Ethel Norton, & Helen Norton, Heirs of Eli Norton, Deceased; Florence Thompson & Oliver C. Thompson, C. J. Harris, Jas. C. Stewart, Bertha Tillotson, Roland McDonald, John McDonald, Martha McDonald, Heirs of Wm. McDonald, Deceased, and All Other Occupants and Claimants of the Northeast Quarter of Section Thirty-four, in Township Eleven North, of Range Nine East, in Columbia County, Wisconsin, or of Any Part Thereof, Whose Names are Unknown to the Plaintiffs and Cannot Now be Ascertained, Defendants in Error.

To the honorable the justices of the United States Supreme Court:

Your petitioners, the above-named plaintiffs in error, respectfully represent that there is manifest error committed to the great injury of your petitioners by the final order and judgment of the United States circuit court for the western district of Wisconsin, rendered on the 13th day of August, 1895, in a suit in which said plaintiffs in error were plaintiffs and said defendants in error were defendants, dismissing the same for want of jurisdiction, except as

to defendants Thomas Eagan & August Johnson, who disclaim any interest in said lands, as to whom plaintiffs ask no writ of error.

Wherefore your petitioners and each of them separately, considering themselves ag-rieved, pray for a writ of error in said suit to said circuit court to remove the same to the United States Supreme Court, and that said order and judgment of dismissal, except as aforesaid, may be reviewed, reversed, and corrected; and your petitioners will ever pray, etc.

Dated Sept. 11, 1895.

A. R. BUSHNELL,
Att'y for said Pl'ffs in Error.

5 The foregoing petition being now presented and filed, together with an assignment of errors by the plaintiffs in error named in said petition, it is ordered that said petition be, and the same hereby is, granted and allowed; and the plaintiffs in error now presenting and filing good and sufficient bond of security thereon, as provided by law, the same is hereby approved.

And at the same time and during the term of the United States circuit court in and for the western district of Wisconsin, at which the final judgment mentioned in said petition was rendered, I hereby certify that the suit in which said judgment was rendered is in ejectment, brought by the plaintiffs to recover from the defendants the possession of certain lands and premises in this district in which the practice, pleadings, & forms and mode of proceeding conformed as near as may be to the practice, pleadings, and forms and mode of proceeding existing in like causes in the courts of record of the State of Wisconsin, in which the complaint alleges that the plaintiffs reside in and are citizens of the city of Washington, in the District of Columbia, and that the defendants all reside in and are citizens of the State of Wisconsin, and that the plaintiffs are the owners in fee-simple absolute and entitled to the possession of said lands and premises, which exceed in value two thousand dollars and are situated in said western district of Wisconsin, particularly describing the same; that the defendants unlawfully withhold the possession thereof from them and have done so for over six years last past, during all of which time they have had and received the use, rents, and profits of said lands, to the damage of the plaintiffs ten thousand dollars, and the plaintiffs demand judgment against the defendants for the recovery of the possession of said lands and for ten thousand dollars damages for the so withholding of such possession from them and such rents and profits thereof so had and received by the defendants.

6 That said defendants duly moved the court to dismiss said action on the ground that it appears from the allegations of the complaint that the plaintiffs each and all resided at the time of the commencement of the action in and were citizens of the city of Washington, in the District of Columbia, and that therefore the action does not involve any controversy between citizens of different States so as to give the court jurisdiction thereof, which motion coming on duly to be heard on the 8th day of August, 1895, the

court then ordered that said action be dismissed for want of jurisdiction, unless the plaintiffs within five days from that date should so amend their complaint as to allege the necessary jurisdictional facts, and that in case said amendment shall be made according to the terms of this order that then said motion to dismiss should be overruled.

That on the 13th day of August, 1895, said motion to dismiss coming on further to be heard, the plaintiffs then moved the court to amend their said complaint so that it would allege that the plaintiffs Alexander S. Hooe, Jr., Emilie M. Hooe, and Harriet V. Hooe are, and when said suit was begun were, citizens of the District of Columbia, and the plaintiff Josephine R. Chase is and then was a citizen of the State of Minnesota, and to allege that the plaintiffs are each such owners of the undivided one-fourth part of the lands and premises described in the complaint and to make the plaintiffs each separately claim damages and demand judgment as aforesaid; which motion to amend said complaint the court denied on the ground that if made said complaint would still not state any cause of action in which there was a controversy between citizens of different States, so as to give said circuit court jurisdiction thereof.

7 That thereupon said circuit court ordered and adjudged said action dismissed for want of jurisdiction with costs to the defendants; to which denial, ruling, and order, and each thereof, the plaintiffs, and each of them separately, then took proper exceptions, which the court allowed.

And the only questions for the decision of said United States Supreme Court are: First, whether or not said complaint sets forth any cause of action in which there is a controversy between citizens of different States, so as to give said circuit court jurisdiction thereof; second, whether or not said complaint as so proposed to be amended would, if so amended, set forth any cause of action in which there is a controversy between citizens of different States, so as to give said circuit court jurisdiction thereof.

And it is hereby directed that the portion of the record to be certified up to said Supreme Court by the clerk of said circuit court shall be said judgment, petition and assignment of errors, and this certificate, together with said writ of error and the citation to the defendants in error.

Dated September 12th, 1895.

R. BUNN,
District Judge of said District.

[Endorsed:] Filed Sept. 12, 1895. F. M. Stewart, clerk.

8 United States Circuit Court, Western District of Wisconsin.

ALEXANDER S. HOOE, JR., *et al.*, Plaintiffs in Error,
vs.
HUGH JAMIESON *et al.*, Defendants in Error.

And now come the said plaintiffs in error and each of them separately and assign errors committed by the United States circuit

court for the western district of Wisconsin in the rendition of its order and judgment dismissing said cause while pending in that court, for want of jurisdiction, as follows, to wit:

Said circuit court erred in holding—

1st. That the complaint in said cause did not show such diverse citizenship of the parties as gave that court jurisdiction of the cause of action against the defendants and in favor of all of the plaintiffs.

2nd. That the complaint in said cause as asked to be amended by the plaintiffs would not, if so amended, show such diverse citizenship of the parties as would give that court jurisdiction of any cause of action in favor of the plaintiffs against the defendants, and especially of one in favor of the plaintiff Josephine R. Chase.

And said plaintiffs and each of them separately pray that said order and judgment may be reversed as to them and each of them, and said cause, as to them and each of them, reinstated in said circuit court.

Dated September 11th, 1895.

A. R. BUSHNELL &
BUSHNELL, ROGERS & HALL,
Att'y- for Plaintiffs in Error.

[Endorsed:] Filed Sept. 12, 1895. F. M. Stewart, clerk.

9 UNITED STATES OF AMERICA, *ss*:

To Hugh Jamieson, Hugh P. Jamieson, L. A. Squires, C. W. Delaney, Robert Robertson, William Wheeler, Elliot C. Scott, Charles Deming, A. L. Wood, C. H. Butler, Stephen Tillotson, Mariah Tillotson, Henry L. Butler, Sarah J. Johnson, Lewis Edmister, Theresa Tillotson, widow, now remarried, whose last name is unknown to the plaintiffs; Ella L. Rose, A. D. Rose, Sarah B. Tillotson, J. F. Bohling, Mary J. Bohling, William M. Shanks, Phila M. Robinson, Agnes M. Marshall, Thomas W. Stanton, Melissa L. Knight, James Cordiner, Edgar E. Hinckson, James Thompson, Joseph Townsand, as executor of the last will of Eli Norton, deceased; Jane Ida Norton and all the devisees and heirs-at-law of Eli Norton, deceased, whose names are unknown to the plaintiffs; Edward P. Stebbins, John Wilson, William McDonald, John McQueen, George Stephens, Hannah Buck, John Tomlinson, John Tomlinson, Jr., Charles Luce, George L. Francis, W. H. Evarts, William Fuller, William Douglas, Sarah Turner, Phebe M. Robinson, J. W. Robinson, W. G. Robinson, Deo Vernoy, A. Ball, H. L. Butler, Herbert Johnson, Thomas Stanton, J. B. Galloway, Hugh Sloan, Mrs. Samuel Murray, Margaret Murray, Frank Stebbins, Ole Salter, George L. Swartz, L. L. Phinney, Stelmar Phinney, Andrew Skuttle, J. J. Wilson, H. C. Stanton, Rhoda W. Stanton, Amy R. Thomas, Robert Tomlinson, Sarah A. Tomlinson, William O. Hudson, Elizabeth Hudson, Oliver C. Luther, Mary E. Wood, Frederick W. Woolstone, Axie Bull, John Campbell, Mary Jane Rose, Sarah McCredie, John McKenzie, Fannie

H. Green, L. Lobdell, Mary McKenzie, Mary A. Barnes, Peter McKenzie, William K. McKenzie, John B. McKenzie, Christian McKenzie, Kenneth A. McKenzie, Jennette I. McKenzie, Mrs. William McDonald, William McDonald, Jr., P. W. McKenzie, and all the heirs-at-law and devisees of William McDonald, deceased, whose names are unknown to the plaintiffs; Otto Komnitsch, Medora Thompson, James Thompson, Jr., John Thompson, Dorcas Thompson, and all the heirs-at-law and devisees of James Thompson, deceased, whose names are unknown to the plaintiffs; The Poynette Presbyterial Academy and W. T. Parry, E. Fred. Russell, James Hall, W. L. Green, and Thomas Sanderson, its trustees; Daisy Norton, Maud Norton, Sadie Norton, Ethel Norton, & Helen Norton, heirs of Eli Norton, deceased; Florence Thompson & Oliver C. Thompson, C. J. Harris, Jas. C. Stewart, Bertha Tillotson, Roland McDonald, John McDonald, Martha McDonald, heirs of Wm. McDonald, deceased, and all other occupants and claimants of the northeast quarter of section thirty-four, in township eleven north, of range nine east, in Columbia county, Wisconsin, or of any part thereof, whose names are unknown to the plaintiffs and cannot now be ascertained, defendants in error:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 2nd Monday in October next, pursuant to the writ of error filed in the clerk's office of the United States circuit court for the seventh circuit and the western district of Wisconsin, wherein Alexander S. Hooe, Jr., Emilie M. Hooe, Harriet V. Hooe, and Josephine R. Chase (boen Hooe) are plaintiffs and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Romanzo Bunn, judge of the district court of the United States for the western district of Wisconsin, acting as circuit judge therein, this 12th day of September, A. D. 1895.

R. BUNN,
District Judge of said District.

10 [Endorsed:] Citation. Filed Sept. 12, 1895. F. M. Stewart, clerk.

(Erdall & Swansen.)

Rec'd a copy of the within citation & of bond on writ of error this 11th day of October, 1895.

ERDALL & SWANSEN,
Att'ys for Def'ts L. A. Squires, John Tomlinson, & Elliot C. Scott.

(Bashford, O'Connor & Aylward.)

Received a copy of the within citation & of bond on writ of error this 11th day of October, 1895.

BASHFORD, O'CONNOR & AYLWARD,

Attorneys for defendants, Hugh Jamieson, James Hall, the Poynette Presbyterial Academy & its trustees, Mrs. Axie Bull, John Tomlinson, Joseph Townsend, as administrator of the estate of Eli Norton, deceased; Mrs. M. E. Wood, Henry L. Butler, Wm. McDonald, Mrs. Wm. McDonald, Wm. McDonald, Jr., J. W. Robinson, John McKenzie, Mary McKenzie, Peter McKenzie, William R. McKenzie, John B. McKenzie, Christian McKenzie, Kenneth A. McKenzie, Jennette I. McKenzie, P. W. McKenzie, Herbert Johnson, Wm. Douglas, J. F. Bohling, Mrs. Margaret Murray, Stephen Tillotson, Mariah Tillotson, Mary J. Bohling, Phila M. Robinson, Medora Thompson, James Thompson, Jr., John Thompson, Dorcas Thompson, Lewis Edmister, Rhoda Stanton, Malissa L. Knight, Edward Stebbins, James Cordiner, L. Lobdell, George L. Swortz, Robert Robertson, Wm. Wheeler, Sarah J. Johnson, Hannah Buck, Sarah Turner, Amy R. Thomas, W. O. Hudson, Elizabeth Hudson, Oliver C. Luther, Jane Ida Norton, Daisy Norton, Maud Norton, Sadie Norton, Ethel Norton, Helen Norton, Roland McDonald, John McDonald, Martha McDonald, Florence Thompson, Oliver C. Thompson, John Campbell, J. J. Wilson, Frank Stebbins, Hugh Sloan, Charles Deming, Theressa Tillotson, Thomas Wm. Stanton, Charles Luce, Mrs. Agnes M. Marshall, E. E. Hinckson, Mary Jane Rose, Elliot C. Scott, F. W. Woolstone, Geo. L. Francis, Fannie Green, Robert Tomlinson, & C. W. Delaney.

11 UNITED STATES OF AMERICA, } ss:
Western District of Wisconsin, }

I, F. M. Stewart, clerk of the circuit court of the United States of America for the western district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate with the originals now in my custody, and they are true copies of their respective originals and are correct transcripts therefrom and of the whole thereof now on file and remaining of record in my office, all of which are herewith returned to the Supreme Court of the United States pursuant to the writ of error hereto attached.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Madison, in the said western district of Wisconsin, this eleventh day of October, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the said United States the one hundred and twentieth.

Seal U. S. Circuit Court, Western Dist. of Wisconsin.

F. M. STEWART, *Clerk.*

12 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the western district of Wisconsin, Greeting:

Because that in the record and proceedings, and also in the rendition of the judgment of the plea which is in the said circuit court, before you or some of you, at the June special term, 1895, thereof, between Alexander S. Hooe, Jr., Emilie M. Hooe, Harriet V. Hooe, and Josephine R. Chase (born Hooe), plaintiffs, and Hugh Jamieson, Hugh P. Jamieson, L. A. Squires, C. W. Delaney, Robert Robertson, William Wheeler, Elliot C. Scott, Charles Deming, A. L. Wood, C. H. Butler, Stephen Tillotson, Mariah Tillotson, Henry L. Butler, Sarah J. Johnson, Lewis Edmister; Theresa Tillotson, widow, now remarried, whose last name is unknown to the plaintiffs; Ella L. Rose, A. D. Rose, Sarah B. Tillotson, J. F. Bohling, Mary J. Bohling, William M. Shanks, Phila M. Robinson, Agnes M. Marshall, Thomas W. Stanton, Melissa L. Knight, James Cordiner, Edgar E. Hinckson, James Thompson; Joseph Townsand, as executor of the last will of Eli Norton, deceased; Jane Ida Norton and all the devisees and heirs-at-law of Eli Norton, deceased, whose names are unknown to the plaintiffs; Edward P. Stebbins, John Wilson, William McDonald, John McQueen, George Stephens, Hannah Buck, John Tomlinson, John Tomlinson, Jr., Charles Luce, George L. Francis, W. H. Evarts, William Fuller, William Douglas, Sarah Turner, Phebe M. Robinson, J. W. Robinson, W. G. Robinson, Deo Vernoy, A. Ball, H. L. Butler, Herbert Johnson, Thomas Stanton, J. B. Galloway, Hugh Sloan, Mrs. Samuel Murray, Margaret Murray, Frank Stebbins, Ole Salter, George L. Swartz, L. L. Phinney, Stelmar Phinney, Andrew Skuttle, J. J. Wilson, H. C. Stanton, Rhoda W. Stanton, Amy R. Thomas, Robert Tomlinson, Sarah A. Tomlinson, William O. Hudson, Elizabeth Hudson, Oliver C. Luther, Mary E. Wood, Frederick W. Woolstone, Axie Bull, John Campbell, Mary Jane Rose, Sarah McCredie, John McKenzie, Fannie H. Green, L. Lobdell, Mary McKenzie, Mary A. Barnes, Peter McKenzie, William K. McKenzie, John B. McKenzie, Christian McKenzie, Kenneth A. McKenzie, Jennette I. McKenzie, Mrs. William McDonald, William McDonald, Jr., P. W. McKenzie, and all the heirs-at-law and devisees of William McDonald, deceased, whose names are unknown to the plaintiffs; Otto Komnitsch, Medora Thompson, James Thompson, Jr., John Thompson, Dorcas Thompson, and all the heirs-at-law and devisees of James Thompson, deceased, whose names are unknown to the plaintiffs; The Poynette Presbyterial Academy and W. T. Parry, E. Fred. Russell, James Hall, W. L. Green, and Thomas Sanderson, its trustees; Daisy Norton, Maud Norton, Sadie Norton, Ethel Norton, & Helen Norton, heirs of Eli Norton, deceased; Florence Thompson & Olive C. Thompson, C. J. Harris, Jas. C. Stewart, Bertha Tillotson, Roland McDonald, John McDonald, Martha McDonald, heirs of Wm. McDonald, deceased, and all other occupants and claimants of the northeast quarter of section thirty-four, in township eleven

north, of range nine east, in Columbia county, Wisconsin, or of any part thereof, whose names are unknown to the plaintiffs and cannot now be ascertained, defendants, manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment should be therein
13 given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the said record and proceedings aforesaid at the city of Washington, in the District of Columbia, and filed in the office of the clerk of the said Supreme Court, on or before the 14th day of October, A. D. 1895, to the end that, the record and proceedings aforesaid being inspected, the said United States Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 12th day of September, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and twentieth.

Issued at the office of the clerk of said circuit court, in Madison, Wisconsin, and under its seal, the date last aforesaid.

[Seal U. S. Circuit Court, Western Dist. of Wisconsin.]

F. M. STEWART,
Clerk of said Circuit Court.

[Endorsed:] U. S. circuit court, W. dist. Wis. Alexander S. Hooe, Jr., *et al. vs.* Hugh Jamieson *et al.* Petition for writ of error, allowance of writ, approval of bond, assignment of errors, certificate of questions for Supreme Court, writ of error, & citation. Clerk's certificate to return next before writ. Filed Sept. 12, 1895. F. M. Stewart, clerk.

14 United States Supreme Court.

ALEXANDER S. HOOE, JR., *et al.*, Plaintiffs in Error,
vs.
HUGH JAMIESON *et al.*, Defendants in Error.

ALEXANDER S. HOOE, JR., *et al.*, Plaintiffs in Error,
vs.
JACOB WERNER *et al.*, Defendants in Error.

Whereas the above two entitled causes are now pending in said court upon questions of jurisdiction only, the first upon a writ of error to the United States circuit court for the eastern district of Wisconsin, and the second upon a writ of error to the United States circuit court for the western district of Wisconsin, and both of said

causes have been advanced for hearing upon the calendar of said Supreme Court, at the October term thereof, 1895, and said questions of jurisdiction are identically the same in each cause, as shown by the respective records therein, except as follows, to wit:

In the first of said causes the court refused to allow the amendment to the complaint asked for by the plaintiff, on the ground that if allowed and such amendment made the complaint would still not state facts sufficient to give the court jurisdiction of any cause of action therein set forth, while in the second of said causes the amendment to the complaint was substantially the same and the court allowed it to be made, against the objection and exception of the defendants, and then held that the complaint, as amended, did not state facts sufficient to give the court jurisdiction of any cause of action therein set forth:

Now, therefore, it is stipulated and agreed that, with the consent of the court, said causes shall both be heard and submitted upon the printed record of only one of said causes, with this
15 stipulation thereto attached and printed as a part thereof, and briefs or arguments by all counsel entitled to be heard in either of said causes, as they may see fit.

Dated January 21st, 1896.

A. R. BUSHNELL,
Attorney for said Plaintiffs in Error.
S. S. BARNEY,
Attorney for Def'ts in Error in Hooe et al. vs. Werner et al.

16 [Endorsed:] Case No. 16,085. Supreme Court U. S., October term, 1895. Term No., 795. Alexander S. Hooe, Jr., P. E., *vs.* Jacob Werner *et al.* Stipulation in regard to printing record. Filed Feb. 4, 1896.

17 United States Supreme Court.

ALEXANDER S. HOOE, JR., *et al.*, Plaintiffs in Error,
vs.
HUGH JAMIESON *et al.*, Defendants in Error.

ALEXANDER S. HOOE, JR., *et al.*, Plaintiffs in Error,
vs.
JACOB WERNER *et al.*, Defendants in Error.

Whereas the above two entitled causes are now pending in said court upon questions of jurisdiction solely, the first upon a writ of error to the United States circuit court for the eastern district of Wisconsin and the second upon a writ of error to the United States circuit court for the western district of Wisconsin, and both of said causes have been advanced for hearing upon the calendar of said supreme court, at the October term thereof, 1895, and said questions of jurisdiction are identically the same in each cause, as shown by the respective records therein, except as follows, to wit:

In the first of said causes the court refused to allow the amend-

ment to the complaint asked for by the plaintiff, on the ground that if allowed and such amendment made the complaint would still not state any cause of action in which there was a controversey between citizens of different States so as to give said circuit court jurisdiction thereof, while in the second of said causes the amendment to the complaint was substantially the same, and the court allowed it to be made, against the objection and exception of the defendants, and then held that the complaint, as amended, did not state facts sufficient to give the court jurisdiction of any cause of action therein set forth:

Now, therefore, it is stipulated and agreed that, with the consent of the court, said causes shall both be heard and submitted upon the printed record of only one of said causes, with this stipu-
18 lation thereto attached and printed as a part thereof, and briefs or arguments by all counsel entitled to be heard in either of said causes, as they may see fit.

Dated January 21st, 1896.

A. R. BUSHNELL,
Attorney for said Plaintiffs in Error.
GEO. W. BIRD,
Att'y for Defendants in Error in First Above-entitled Action.

19 [Endorsed:] Case No. 16,086. Supreme Court U. S., October term, 1895. Term No., 796. Alex'r S. Hooe, Jr., *et al.*, P. E., *vs.* Hugh Jamieson *et al.* Stipulation in regard to printing record. Filed Feb. 11, 1896.

[Endorsed:] 796. U. S. Supreme Court. Alexander S. Hooe, Jr., *et al.*, pl'ffs in error, *vs.* Hugh Jamieson *et al.*, def'ts in error. Return on writ of error. A. R. Bushnell, att'y for pl'ffs in error; P. O., Madison, Wis.

Endorsed on cover: Case No. 16,086. W. Wisconsin C. C. U. S. Term No., 796. Alexander S. Hooe, Junior, Emilie M. Hooe, Harriet V. Hooe, & Josephine R. Chase (born Hooe), plaintiffs in error, *vs.* Hugh Jamieson, Hugh P. Jamieson, L. A. Squires, *et al.* Filed November 7, 1895.

FILED.
NOV 18 1895
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1895.

Nos. ~~795 and 796.~~ 373 & 374.

ALEXANDER S. HOOE ET AL., PLAINTIFFS IN ERROR,

vs.

JACOB WERNER ET AL.

and

ALEXANDER S. HOOE ET AL., PLAINTIFFS IN ERROR,

vs.

HUGH JAMIESON ET AL.

MOTION TO ADVANCE.

Now come the plaintiffs in error in the above-entitled cases, by their attorneys, and move this Court to advance both cases for submission in accordance with the provisions of the 32d Rule of Practice.

Each of said cases was dismissed by a circuit court of

the United States for want of jurisdiction, and the question of jurisdiction *vel non* has been duly certified to this Court and is the sole question in issue.

Wherefore, &c., &c.

S. F. Phillips,
Frederic D. McKenney,
Attorneys for Plaintiffs in Error.

November, 1895.

Office Supreme Court, U. S.
FILED
JAN 25 1897
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

No. [redacted]. 373

Writ of Error to Eastern District of Wisconsin.

ALEXANDER HOOE ET AL., PLAINTIFFS IN ERROR,

vs.

JACOB WERNER ET AL., DEFENDANTS IN ERROR.

S. S. BARNEY,
Attorney for Defendants in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

No. 795.

Writ of Error to Eastern District of Wisconsin.

ALEXANDER HOOE ET AL., PLAINTIFFS IN ERROR,

vs.

JACOB WERNER ET AL., DEFENDANTS IN ERROR.

And now come the above-named defendants, by their attorney herein, and move the Court to advance this case, for the reason that the only question in issue therein in this Court is the question of the jurisdiction of the court below.

The following is a brief statement of the matter involved:

This is a writ of error to the United States circuit court for the eastern district of the State of Wisconsin, and the question presented for decision is whether said circuit court has any jurisdiction of this action.

The action was begun by the filing of a precipe with the clerk of said circuit court; whereupon a summons was issued and served on the defendants June 2, 1895.

The defendants appeared and demanded a copy of the complaint, which was served upon their attorney on the 22d day of July, 1895.

The complaint alleged that the plaintiffs were all citizens of the District of Columbia, and that the defendants were all citizens of the eastern district of Wisconsin, and stated a cause of action in ejectment, alleging that the plaintiffs were the joint owners in fee-simple of certain lands situated in said District, the same having been devised to them by the last will and testament of their father, subject to a life estate therein of their mother, and that the defendants were unlawfully in possession of the same.

The defendants thereupon moved the court to dismiss the action for want of jurisdiction, and this motion came on for argument before said circuit court on the 23d day of August, 1895. At the hearing of this motion the plaintiffs obtained leave of the court, against the objection of the defendants, to file and serve an amended complaint, wherein it is alleged that three of the plaintiffs are citizens of the District of Columbia and the other citizens of the State of Minnesota.

The amended complaint also alleges that the plaintiffs are the owners "each of the undivided one-fourth part" of the lands in question, and demands judgment for "their said respective interests in and to said lands."

The motion to dismiss was heard upon all the papers and proceedings in the case, including the amended complaint, and the court dismissed the case.

S. S. Barney,
Attorney for Defendants in Error.

[Endorsed:] Supreme Court of the United States, from the eastern district of Wisconsin. Alexander Hooe *et al.*, plaintiffs, *vs.* Jacob Werner *et al.*, defendants. Motion to advance case.

MOTION TO ADVANCE.

You will please take notice that on the 27th day of February, 1897, at the Supreme Court-room, in the Capitol, in the city of Washington, District of Columbia, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, the above-named defendants will submit a motion herein, of which a copy is herewith served upon you, the same being a motion to advance the above-entitled case under the 32d rule.

Yours, etc.,

S. S. BARNEY,
Attorney for Defendants in Error.

To A. R. BUSHNELL, Esq.,
Attorney for Plaintiffs in Error.

[Endorsed:] Supreme Court of the United States, from the eastern district of Wisconsin. Alexander Hooe *et al.*, plaintiffs, *vs.* Jacob Werner *et al.*, defendants. Notice of motion to advance case.

166-312

Supr. Court, U. S.
FEB 27 1897
JAMES H. MCKENNEY
CLERK

166-395

Corrected.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 396

ALEXANDER S. HOOE, JUNIOR, EMILIE M. HOOE, HARRIET V. HOOE, AND JOSEPHINE R. CHASE, (BORN HOOE), PLAINTIFFS IN ERROR,

374.

vs.

HUGH JAMIESON, HUGH P. JAMIESON, L. A. SQUIRES, ET AL.

SAME PLAINTIFFS IN ERROR,

373.

vs.

JACOB WERNER, ET AL.

BRIEF FOR PLAINTIFFS IN ERROR.

A. R. BUSHNELL,

Attorney for Plaintiffs in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 796.

ALEXANDER S. HOOE, JUNIOR, EMILIE M. HOOE, HARRIET V. HOOE, AND JOSEPHINE R. CHASE, (BORN HOOE) PLAINTIFFS IN ERROR,

vs.

HUGH JAMIESON HUGH P. JAMIESON, L. A. SQUIRES, ET AL.

SAME PLAINTIFFS IN ERROR,

vs.

JACOB WERNER, ET AL.

BRIEF FOR PLAINTIFF IN ERROR.

These causes were dismissed below for want of jurisdiction, and are duly certified up to the supreme court on writs of error, the first from the circuit court of the western, and the second from the circuit court of the eastern district of Wisconsin, under section 5 of the act of congress, approved March 3, 1891, upon the question of jurisdiction alone.

By stipulations of counsel the causes are to be both heard and submitted upon the printed record of only one of them, together with said stipulation also printed, showing that the questions of jurisdictions are identically the same in each cause, except that in the first mentioned cause the court refused to allow the amendment to the complaint asked for by the plaintiff, on the ground that if allowed and such amendment made,

the complaint would still not state any cause of action, in which there was a controversy between citizens of different states, so as to give the circuit court jurisdiction thereof, while in the second, the amendment to the complaint was substantially the same and the court allowed it to be made, against the objection and exception of the defendants, and then held that the complaint, as amended, did not state facts sufficient to give the court jurisdiction of any cause of action therein set forth. (See stipulations in printed transcript, pages 9 to 11.)

The question of jurisdiction depends upon the diverse citizenship of the parties as shown by the respective complaints, and the amendment thereto proposed in one action, and actually made in the other.

The actions are in ejectment, (local, *in rem*, U. S. R. S., sec. 741, and Sup. 1874–1891, p. 84, sec. 8), to recover from the defendants the possession of certain lands of which they are in possession, situated in said districts respectively, in which actions the practice, pleadings, and forms and modes of proceeding, conformed as near as may be, to the practice, pleadings, and forms and modes of proceeding existing in like causes in the courts of record of the state of Wisconsin, as required by U. S. R. S., section 914.

In the first said action the complaint alleges that the plaintiffs reside in and are citizens of the city of Washington in the District of Columbia, and that the defendants all reside in and are citizens of the state of Wisconsin; that the plaintiffs are the owners in fee simple absolute and entitled to the possession of said lands, particularly describing the same, which exceed in value two thousand dollars; that the defendants unlawfully withhold the possession thereof from them, and have done so for over six years last past, during all of which time they have had and received the use, rents and profits of said lands, to the damage of the plaintiffs ten thousand dollars; and the plaintiffs demand judgment against the defendants for the recovery of the possession of said lands, and for ten thousand dollars damages for the so withholding of such possession om them, and such rents and profits thereof so had and received by the defendants.

The defendants duly moved to dismiss the action on the ground that it appears from the allegations of the complaint that the plaintiffs each and all, at the time of

its commencement, resided in, and were citizens of, the city of Washington, in the District of Columbia, and that, therefore, the action does not involve any controversy between citizens of different states, so as to give the court jurisdiction thereof; which motion coming on duly to be heard on the 8th day of August, 1895, the court then ordered that said action be dismissed for want of jurisdiction, unless the plaintiffs within five days from that date should so amend their complaint as to allege the necessary jurisdictional facts; and that in case said amendment should be made according to the terms of such order, that then said motion to dismiss should be overruled.

On August 13th, 1895, said motion to dismiss coming on further to be heard, the plaintiffs them moved the court to amend their complaint so that it would allege that the plaintiffs Alexander S. Hooe, Jr., Emilie M. Hooe and Harriet V. Hooe are, and when said suit was begun were, citizens of the District of Columbia, and the plaintiff Josephine R. Chase is, and then was, a citizen of the state of Minnesota, and to allege that the plaintiffs are each such owners of the undivided one-fourth part of the lands and premises described in the complaint, and to make the plaintiffs each separately, claim damages and demand judgment as aforesaid; which motion to amend said complaint the court denied, on the ground that with the amendment made, said complaint would still not state any cause of action in which there was a controversy between citizens of different states, so as to give said circuit court jurisdiction thereof.

And thereupon the court dismissed the action for want of jurisdiction; to which ruling, denial, order and judgment, and each thereof, the plaintiffs and each of them separately, then took proper exceptions, which the court allowed. (See judge's certificate, printed transcript, p. 3–4.)

The plaintiffs, and each of them separately, duly filed their assignment of errors, that the circuit court erred in holding:

1st. That the complaint in said cause did not show such diverse citizenship of the parties as gave that court jurisdiction of a cause of action against the defendants and in favor of all of the plaintiffs.

2nd. That the complaint in said cause, as asked to be amended by the plaintiffs, would not, if so amended,

show such diverse citizenship of the parties, as would give that court jurisdiction of any cause of action in favor of the plaintiffs against the defendants, and especially of one in favor of the plaintiff Josephine R. Chase.

And in the assignment of errors the plaintiffs and each of them separately, pray that the said order and judgment of dismissal may be reversed as to them and each of them, and said cause as to them and each of them, re-instated in said court, (printed transcript, p. 4–5.)

The plaintiffs and each of them separately, petition for this writ of error and the same is allowed.

The questions as stated in the judge's certificate are:

"First. Whether or not said complaint sets forth any cause of action in which there is a controversy between citizens of different states, so as to give said circuit court jurisdiction thereof."

"Second. Whether or not said complaint, as so proposed to be amended, would if so amended, set forth any cause of action in which there is a controversy between citizens of different states, so as to give said Circuit Court jurisdiction thereof." (Transcript p. 4.)

In said second mentioned action the lands are alleged to be of the value of $9,000.00, and the damages for the withholding of the possession of them are laid at $5,000.00. The amendment to the complaint asked by the plaintiffs, having been allowed, and the action then dismissed for want of jurisdiction, the plaintiffs, and each of them separately, assigned as errors, that the court erred in holding:

1st. That the complaint in said cause did not show such diverse citizenship of the parties as gave that court jurisdiction of the cause of action against the defendants and in favor of all of the plaintiffs.

2nd. That the complaint in said cause did not show such diverse citizenship of the parties, as gave that court jurisdiction of a cause of action against the defendants and in favor of the plaintiff Josephine R. Chase.

And the plaintiffs, and each of them separately, prayed a reversal of the dismissal, and re-instatement of the action.

And the two questions in that action certified up by the district judge, in substance follow these assignments of error.

Other cases in the circuit courts of the Wisconsin districts are stipulated to abide the event of these.

ARGUMENT.

The questions arising in these cases may be considered thus:

1. Can a citizen of the District of Columbia maintain an action in a United States circuit court, against a citizen of the state where the suit is brought?

2. Can the plaintiff Josephine R. Chase, under said U. S. R. S., section 914, and the statutes of Wisconsin prescribing the "practice, pleadings and forms and modes of proceeding" in actions of ejectment, recover her undivided one-fourth part of the lands in question, in these actions?

3. Could the complaints properly be amended, so as to show jurisdictional facts existing when the actions were commenced?

I.

Can a citizen of the District of Columbia maintain an action in a United States circuit court against a citizen of the state where the suit is brought?

Hepburn vs. Ellzey, 2 Cranch., 445, and a line of decisions following it, without any real consideration of the question itself, answered this question in the negative. But when carefully examined Hepburn vs. Ellzey only construed the act of congress of 1789. (U. S. R. S., section 629.) That act only gave these courts jurisdiction by reason of diverse citizenship, where "an alien "is a party, or the suit is between a citizen of *the state* "*where it is brought* and a citizen of another *state*."

This court then considered the meaning of the word "state," as used in that act. Obviously, in the connection of "the state where it (the suit) is brought," it could mean nothing else than a member of "the American confederacy," "a member of the union," as there held. These U. S. circuit courts existed no where else. And where it was used a second time, a few words later in the same sentence and in the same grammatical case and form, it could not well be held to have a different meaning.

The constitution provides on this question, (Article 3, section 2), that, "The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, . . . to *controversies . . between citizens of different states*, . . and between a state, or the citizens thereof, and foreign states, citizens, or subjects."

Hepburn vs. Ellzey, was decided in 1804.

The Act of 1789 was thereafter in force until the passage of the Act of March 3, 1875, which on this subject adopted substantially the language of the constitution, viz.:

"That the circuit courts of the United States shall have original cognizance, . . of all suits of a civil nature, at common law or in equity, . . arising under the constitution or laws of the United States, . . . or in which there shall be *a controversy between citizens of different states*, . . . or a controversy between citizens of a state and foreign states, citizens, or subjects."

This Act of 1875 was not materially changed by the amendments of 1887, and 1888, except that the amount involved necessary to give jurisdiction was made $2,000.00, instead of $500.00. (Supplement to U. S. R. S., 1874–1891, page 611.)

Thus it will be seen, that the jurisdiction on the ground of diverse citizenship of the parties, is now as broad as congress has power to make it, under the constitution, and cannot be enlarged without amendment of the constitution.

Hepburn vs. Ellzey has sometimes been cited as construing the constitutional powers of congress to confer jurisdiction on this ground. That it did not do so, seems clear from considering:

1. The case itself.
2. Such construction of the constitution was unnecessary in that case.
3. Such a construction of the constitution would have been incorrect.

1. In Hepburn vs. Ellzey, two citizens of the District of Columbia sued a citizen of Virginia in the U. S. circuit court for the district of Virginia. The question of jurisdiction was raised, and certified up to the United States supreme court on a divided opinion between the circuit and district judges. It is of especial significance, that whereas the briefs of counsel show, that the ques-

tion of the constitutional jurisdiction of the U. S. courts was fully argued upon the express language of the constitution, yet the opinion, which is by Chief Justice Marshall, expressly says of the question in the case, "This depends on the act of congress describing the jurisdiction of that court." (See 2 Cranch., 445, as reported in Lawyers Co-op. Ed., U. S. Supreme Court Reports, Book 2, 332.) And then, giving the language of the act, he says, "To support the jurisdiction in this case, therefore, it must appear that Columbia is a state." And in the last paragraph of the opinion in commenting upon the extraordinary situation in which the jurisdiction of the U. S. circuit courts is left by the decision, and suggesting the proper remedy, he says, "But this is a subject for *legislative*, not for judicial consideration."

The opinion in express terms undertakes only to construe the act of Congress, which it quotes, on the subject of the diverse citizenship of parties as affecting the jurisdiction; and it makes no reference to the language of the constitution on that subject.

It is true that the opinion construes the meaning of the word "state," as used in the act of Congress, and holds that it there means the kind of a state expressly provided for as one of the United States in the constitution. But this is altogether another thing from construing the provision of the constitution granting Congress power to extend the jurisdiction of the U. S. courts to all "controversies * * between citizens of different states."

C. Lee, in his brief in that case, contending against the jurisdiction of the court, insisted that, "Even if the constitution of the United States authorizes a more enlarged jurisdiction than the judiciary act of 1789 has given, yet the court can take no jurisdiction which is not given by the act."

This was correct under the well settled principle that as to these controversies the constitution defines the limits of the jurisdiction, and congress prescribes how much of it is to be exercised.

Turner vs. Bank, 4 Dall., 20.
McIntyre vs. Wood, 7 Cranch, 504.

This seems to be the view adopted by the court in the opinion.

The opinion concedes, as contended by E. J. Lee in

favor of the jurisdiction of the court, that the District of Columbia is "a state," according to the definition of writers on general law. The opinion says:

"On the part of the plaintiffs it has been urged that "Columbia is a distinct political society; and is there-"fore a 'state' according to the definitions of writers "on general law.

"This is true. But as the act of congress obviously "uses the word 'state' in reference to that term as used "in the constitution, (to designate a member of the "union, he evidently means), it becomes necessary to in-"quire whether Columbia is a state in the sense of this "instrument. The result of that examination is a con-"viction that the members of the American confederacy only are the states contemplated in the constitution (as such members of the union."

The opinion then proceeds to consider the clauses of the constitution which provide what kind of states shall be members of the United States, viz.: Such as choose representatives and senators in congress, and electors of the president. And it then says: "These clauses "show that the word 'state' is used in the constitution as "designating a member of the union, and excludes from "the term the signification attached to it by writers on "the law of nations. When the same term which has "been used plainly in this limited sense in the articles "respecting the legistative and executive departments is "also employed in that which respects a judicial depart-"ment, it must be understood as retaining the sense "originally given to it."

"Other passages from the constitution have been "cited by the plaintiffs to show that the term state is "sometimes used in its more enlarged sense. But on ex-"amining the passages quoted, they do not prove what "was to be shown by them," i. e., they do not prove, as contended by plaintiff's counsel, that the act of 1789 under consideration, here used the word "state" in the general sense of writers on the law of nations.

And after this language in the opinion of this great chief justice, comes the final summing up of the whole matter, in the words:

"It is true that as citizens of the United States, and "of that particular district which is subject to the juris-"diction of congress, it is extraordinary that the courts "of the United States, which are open to aliens, and to "the citizens of every state in the union, should be

"closed upon them. But this is a subject for *legislative*, "not for judicial consideration."

That this is a subject for "legislative" consideration, as declared in the last sentence, can mean nothing else than that this extraordinary situation may be remedied by an act of congress. The constitution of the United States itself, which the writer of that opinion had helped to accept, in its very first sentence declares where the "legislative" powers are vested, viz.: "All "legislative powers herein granted shall be vested in a "congress of the United States, which will consist of a "senate and house of representatives." Constitution, article 1, section 1.

That constitution consists of only seven articles. The first three of them treat respectively of the legislative, executive and judicial powers, thereby granted. The 4th article provides that, "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states," and certain other rules of government. Article 5 provides solely for the *amendment* of the constitution. Article 6 continues former obligations in force, makes the constitution the supreme law, and prescribes an oath of office; and article 7 simply provides for the ratification of the constitution.

It can not be presumed that this great expounder of the constitution, in pointing out the remedy for the extraordinary condition which he so criticises, unadvisedly and inconsiderately suggested "legislative" action by congress, when he meant an *amendment to the constitution*, a subject matter to which a whole article of that instrument is devoted.

It is of significance, too, that the jurisdiction given by the act of 1789, had been extended by an act approved February 13, 1801, to include, "all actions, or suits, matters and things, cognizable by the judicial authority of the United States under and by virtue of the constitution thereof, where the matter in dispute shall amount to $400," (see 2 U. S. Statutes at Large, p. 73, ch. 4, sec. 11); which act had been repealed and the former laws reinstated, by an act approved March 8, 1802. (2 Id., p. 132, ch. 8, sec. 1.)

In view of this, then, so recent legislation on the subject, it would be still more extraordinary if Chief Justice Marshall thus suggested a "legislative" remedy, when he meant an amendment to the constitution.

Such a construction makes the different clauses of the opinion inconsistent with each other.

The conclusion must be, that in Hepburn v. Ellzey, Chief Justice Marshall only intended to construe the word "state," as used by the act of 1789, in the clause conferring jurisdiction by reason of diverse citizenship; and that he regarded the provision of the constitution on this subject, as broad enough to authorize congress to confer the jurisdiction contended for by the plaintiffs in that case. Such a construction, makes each part of the opinion entirely consistent with every other part.

2. Such construction of the constitution was unnecessary in that case.

The construction of the act of 1789, was entirely conclusive of the question at bar.

There were no United States Circuit Courts, such as were created by the act of 1789, elsewhere than in the kind of states that were members of the Federal union, and chose senators and representatives in congress, and electors of president. United States Circuit Courts in the District of Columbia, and the territories if any, were the creations of separate and distinct acts, and were differently constituted. They were not the United States Circuit Courts created or in anyway provided for by the act of 1789, and it was plain that suits brought in them could not have been had in view by the language of that act being construed.

3. Such a construction of the constitution would be incorrect.

The provisions of the constitution defining the limits of the jurisdiction which congress may empower the United States courts to exercise by reason of diverse citizenship of the parties, should not be construed by the narrow test of the meaning of the single word "state," as there used, but upon the broad view of the full intent and purpose of the whole of that great instrument, the full intent and purpose of its framers, and of the states by which it was ratified and adopted.

The chief corner stone of the republic, as laid down in the declaration of independence, is, *equal rights to all men before the law*. To the free inhabitants of each state, "all privileges and immunities of citizens" were secured in every other state by the fourth article of the articles of confederation of 1777. The same "privileges and immunities of citizens" were carefully pre-

served in section 2 of article 4 of the constitution. These rights were further secured by the 14th amendment to the constitution, and that amendment also defined citizenship in the United States and the *states*, viz.: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the *state* where they reside."

One great object in the establishment of United States courts was, to have a tribunal in each state, free from local influences, to which all non-residents might resort for legal redress. Gordon vs. Longest, 11 Pet., on p. 104.

This privilege of sueing for redress of grievances against citizens of distant communities in these courts not subject to local influences, is an important one. Can it be that it was intended by the constitution to unnecessarily deny, that equal privilege, to United States citizens in the District of Columbia? This right is given to aliens, and citizens of every state in the union. Did the constitution, in this respect, intend to give other citizens generally, and even an expatriated inhabitant of that district, greater privileges for doing business and getting justice throughout the United States, than to citizens of the District of Columbia? As to them, did it intend to violate its own great rule of equal "privileges and immunities" to all citizens?

There was no District of Columbia when the constitution was adopted. What is now that district was then a part of Maryland, and so remained for some years thereafter. But the constitution, article 1, section 8, subdivision 17, provides for the selection of a seat of government not over 10 miles square, over which congress is to have exclusive jurisdiction. Did the constitution intend to take away from the citizens of such district to be formed, the equal privilege, which they before had, of resorting to these impartial and locally uninfluenced tribunals, for the redress of grievances against citizens of other states?

The intent of the constitution must have been, to create a federal judicial system, capable of being made complete and harmonious in all its parts, for the equal protection and benefit of all citizens under it, in all the political communities and sub-divisions, for the formation of which it provided.

The constitution could not have intended that the discord and incongruities in the jurisdiction of the federal

courts, under the earlier acts of congress and decisions, should be irremediably perpetuated.

The question of the construction of the constitution on this point has never yet been directly passed upon by this court.

The construction of the act of 1789 in Hepburn vs. Ellzey has been followed in New Orleans vs. Winter, 1 Wheat., 91; Barney vs. Baltimore, 6 Wall., 280, and generallywithout question.

But Texas vs. White, 6 Wall., 700, directly overrules Hepburn vs. Ellzey, in so far as that opinion may be considered a construction of the general meaning of the word "state," as used in the constitution, by holding that Texas, while yet an unreconstructed rebel state, under a military governor, and not having senators or representatives in congress nor being entitled thereto, and not being entitled to vote for electors of president, was yet entitled to bring suit as a "state," in a U. S. circuit court.

That suit was brought to restrain the defendants from receiving payment for certain government bonds, and to compel the surrender of the bonds to the state. A plea to the jurisdiction raised the question as to whether or not the plaintiff was a "state," when the suit was brought. It was clear that if the plaintiff was not then a state, the suit must be dismissed.

Chief Justice CHASE, who wrote the opinion in that case, in considering what the constitution means by the word "state," says:

"Some not unimportant aid, however, in ascertaining the true sense of the constitution, may be derived from considering what is the correct idea of a state, apart from any union or confederation with other states. The poverty of language often compels the employment of terms in quite different significations; and of this hardly any example more signal is to be found than in the use of the word we are now considering. It would serve no useful purpose to attempt an enumeration of all the various senses in which it is used. A few only need be noticed.

"It describes sometimes a people or community of individuals united more or less closely in political relations, inhabiting temporarily or permanently the same country; often it denotes only the country or territorial region, inhabited by such a community; not unfrequently it is applied to the government under which the

people live; at other times it represents the combined idea of people, territory, and government.

"It is not difficult to see that in all these senses the primary conception is, that of a people or community. The people, in whatever territory dwelling, either temporarily or permanently, and whether organized under a regular government, or united by looser or less definite relations, constitute the state.

"This is undoubtedly the fundamental idea upon which the republican institutions of our own country are established. It was stated very early by an eminent judge, Mr. Justice Paterson, in Penhallow v. Doane, 3 Dall., 93, in one of the earliest cases adjudicated by this court, and we are not aware of anything, in any subsequent decision, of a different tenor.

"In the constitution the term "state," most frequently expresses the combined idea just noticed of people, territory and goverment. A state, in the ordinary sense of the constitution, is a political community of free citizens, occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed. It is the union of such states, under a common constitution, which forms the distinct and greater political unit, which that constitution designates as the United States, and makes of the people and states which compose it, one people and one country.

"The use of the word in this sense hardly requires further remark. In the clauses which impose prohibitions upon the states in respect to the making of treaties, emitting of bills of credit, and laying duties on tonnage, and which guarantee to the states representation in the House of Representatives and in the Senate, are found some instances of this use in the constitution. Others will occur to every mind.

"But it is also used in its geographical sense, as in the clauses which require that a representative in congress shall be an inhabitant of the state in which he shall be chosen, and that the trial of crimes shall be held within the state where committed.

"And there are instances in which the principal sense of the word seems to be that primary one to which we have adverted, of a people or political community, as distinguished from a government.

"In this latter sense the word seems to be used in the

clause which provides that the United States shall guarantee to every state in the union a republican form of government, and shall protect each of them against invasion.

"In this clause a plain distinction is made between a state and the government of a state.

"Having thus ascertained the senses in which the word "state" is employed in the constitution, we will proceed to consider the proper application of what has been said."

Reciting, then, and considering the facts of the late war through which Texas came to be under a military government, unrepresented in Congress, and not entitled to vote for presidential electors, the opinion says: "Our conclusion, therefore, is that Texas continued to be a state, and a state of the union, notwithstanding the transactions to which we have referred." And this although there was, "then no government in Texas in constitutional relations with the union."

Mr. Justice GRIER in his dissenting opinion in Texas vs. White, says, "If I regard the truth of history for the last eight years, I can not discover the state of Texas as one of these United States." He then cities Hepburn vs. Ellzey, in support of his view of the proper definition of the word "state," as used in the constitution, and quotes the whole opinion of Chief Justice Marshall in that case, except the last clause thereof criticising the extraordinary situation in which that decision leaves the jurisdiction of the U. S. courts, and suggesting a "legislative" remedy.

Texas vs. White was followed in First National Bank vs. Texas, 20 Wall, 72. It was enforced in Texas vs. White & Chiles, 22 Wall., 157. In Keith vs. Clark, 97 U. S. 454, on p. 459 et seq., it is largely quoted from and followed on this point. And in McPherson v. Blacker, 146 U. S., 1, on p. 25, the opinion by Mr. Chief Jnstice Fuller, accepts and follows Texas vs. White.

That the constitution uses the word "state" in the broader sense of the writers on international law, as contended by plaintiff's counsel, E. J. Lee, in Hepburn vs. Ellzey, is now well recognized by the decisions of this court, and especially by Texas vs. White, *supra*, Keith vs. Clark, *supra*, and McPherson v. Blacker, *supra*.

But further, the 14th amendment to the constitution has now settled and defined citizenship in the United

States, and in each "state," in language that plainly uses the word "state," in the wider sense of writers on international law, viz.:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of *the United States* and of *the state* wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Before this amendment, as was said in the opinion of the court in the slaughter house cases, 16 Wall., 36, "It had been said by eminent judges that no man was a citizen of the United States except as he was a citizen of one of the states composing the union. Those, therefore, who had been born and who resided always in the District of Columbia or in the territories, though within the United States, were not citizens. Whether this proposition was sound or not, had never been judicially decided. * * * * * To remove this difficulty primarily, and to establish a clear and comprehensive definition of citizenship which should declare what should constitute citizenship of the United States and also citizenship of a state, the first clause of the first section (of this amendment) was framed."

"A state in the ordinary sense of the constitution, is a political community of free citizens, occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed." Texas vs. White, *supra;* Keith vs. Clark, *supra;* McPherson vs. Blacker, *supra*.

The District of Columbia comes clearly within this definition of a "state." It is, "a political community of free citizens, occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution, (the constitution of the United States), and established by the consent of the governed," (the ratification of the United States constitution containing S. D. 17 of sec. 8, art. 1, by Maryland, and the act of cession of its legislature). Cohens vs. Virginia, 6 Wheat. 264, on p. 428–9.

The object of the 14th amendment in respect to citizenship was, to preserve equality of rights, and to pre-

vent discrimination as between citizens. In re Kemmler, 136 U. S., 436.

There is now clearly a citizenship of the United States, and of each of the subdivisions thereof wherein any citizen of the United States can reside. This must include as "states," the District of Columbia and the territories. If it does not, then the protecting provisions of the 14th amendment, are without power in the District of Columbia and the territories. This could not have been the intention of that amendment.

It is true that congress legislates for the District of Columbia, and has supervisory control over legislation in the several territories. But this amendment should be construed as governing the legislative powers of congress, as well as those of the legislatures of the several states. It could never have been intended that congress might violate these rights vouchsafed to all citizens of the United States, any more than might the legislatures of the several states.

Without the jurisdiction contended for, citizens of the District of Columbia do not have "equal protection of the laws," as guaranteed by the 14th amendment.

It may be said that without the jurisdiction contended for there is a violation of the 13th amendment to the constitution prohibiting slavery and involuntary servitude, except as a punishment for crime.

Senator Trumbell, who drew the civil rights bill of 1866, said in its advocacy, "I take it that any statute which is not equal to all, and which deprives any citizen of civil rights which are secured to other citizens, is an unjust encroachment upon his liberty; and that it is in fact a badge of servitude which by the constitution is prohibited." Cong. Globe, 1st Sess. 39 Cong. part 1, p. 474., cited in Slaughterhouse cases.

In Watson vs. Brooks, 13 Fed. Rep., 540, which was a suit brought by citizens of Washington Territory against citizens of the state of Oregon, on this question of jurisdiction because of diverse citizenship, Deady, D. J., follows Hepburn vs. Ellzey; New Orleans vs. Winter, and Barney vs. Baltimore, *supra*, but under protest. He remarks that the territories and Columbia are "states," within the general meaning of the term, and that the latter case followed the two former ones without question, on the principle of *stare decisis*. He mistakenly regards these cases as construing the language of the constitution defining the limits of the

jurisdiction which congress may authorize the federal courts to exercise in such controversies. Upon this view he questions their correctness, and says:

"But it is very doubtful if this ruling would now be made if the question was one of first impression, and it is to be hoped it may yet be reviewed and overthrown.

By it, and upon a narrow and technical construction of the word "state," unsupported by any argument worthy of the able and distinguished judge who announced the opinion of the court, the large and growing population of American citizens resident in the District of Columbia and the eight territories of the United States, are deprived of the privilege accorded to all other American citizens, as well as aliens, of going into the national courts when obliged to assert or defend their legal rights away from home."

The framers of the constitution necessarily dealt with words and things generaly in their primary sense. They planned and builded with the crude materials then on hand, and which they knew and handled by their then common names. "States" as members of the federal union having senators and representatives in congress and voting for presidental electors, were before that time unknown. When, therefore, in providing for the jurisdiction of a federal judiciary, they said it should extend, "to controversies between citizens of different states," they used the word "state" in "the primary conception," as defined in Texas vs. White, viz., that "a people or community * * * in whatever territory dwelling, either temporarily or permanently, and whether organized under a regular government, or united by looser or less definite relations, constitute the state." They meant to include by that provision, all the political subdivisions of peoples and communities who were, or could become citizens of the proposed Union. And no reason existed for their doing otherwise.

They used no words of exclusion. The withholding of the equal protection and benefits of this jurisdiction from the citizens of any part of the proposed Union, was never suggested or thought of. To construe into the language used, such intention of exclusion, against the plain spirit and intent of the whole instrument, would be to violate a most important canon of construction.

This equal right and privilege for which the plaintiff

citizens of the District of Columbia and of the United States contend, is theirs under that "law which natural reason appoints for all mankind," under which, "all men are originally born free." It is theirs under those laws which, "being established by a divine Providence, remain ever fixed and immutable," and which, "no time, no constitution, no contract, can ever destroy or diminish." (Institutes of Justinian; 1 Blackstone's Com.) These laws are recognized by the Declaration of Independence. That great charter of human rights is, in fact, founded upon them. The federal judicial system under the constitution, is in accord with these laws, in spirit and in intent.

The view contended for by the plaintiffs, removes an incongruity and harmonizes the federal jurisdiction, and makes the constitution in this respect entirely consistent with itself. The opposite view violates the spirit of the constitution, and perpetuates incongruous discord.

The convention of wise men who drew up the constitution, framed it in general terms, capable of adaptation to all the future needs of a continent, and to fit a development destined to become the greatest nation of the world. They did not arrogate to themselves the task of fixing inflexible rules that should cover all the minutie of future exigencies, but trusted much to the wisdom and patriotism that should survive, and come after them.

It is most respectfully submitted, that the large and growing population of the District of Columbia, ought not to be forever denied this equal right and privilege, and that the constitution does not so intend.

II.

Can the plaintiff, Josephine R. Chase, under said U. S. R. S., Sect. 914, and the statutes of Wisconsin prescribing the "practice, pleadings, and forms and modes of proceeding" in actions of ejectment, recover her undivided one-fourth part of the lands in question, in these actions.

Section 914 provides that, "The practice, pleadings and forms and modes of proceeding in civil causes, *other than equity and admiralty causes*, in the circuit and district courts shall conform as near as may be, to the

practice, pleadings and forms and modes of proceeding existing at the time in like causes in the courts of record of the state within which such circuit and district courts are held, any rule of court to the contrary notwithstanding."

This section originated in section 5, of the act of June 1, 1872, (17 U. S. Stat., Ch. 255, p. 197.)

From the permanent Process Act of May 8, 1792, (1 Stat., 275), to this act, "it was always in the power of the courts, by general rules, to adapt their practice to the exigencies and conditions of the times.

But the statute of 1872 is peremptory, and whatever belongs to the three categories of practice, pleading and forms and modes of proceeding, must conform to the state law and the practice of the state courts, except where congress itself has legislated upon a particular subject and prescribed a rule. Then, of course, the act of congress is to be followed in preference to the laws of the state."

Amy v. Watertown, 130 U. S., 301.
Indianapolis & St. L. R. R. Co. v. Horst, 93 U. S., 291.

This section was intended to assimilate the practice, pleadings, and forms and modes of proceeding in common law cases in the federal courts, to the practice, pleadings and procedure "used in such cases in the courts of record of the state within which the federal courts are held."

Lamaster v. Keeler, 125 U. S., 376.
Ex Parte Chautegay Ore & Iron Co., 128 U. S., 544.
Glenn v. Sumner, 132 U S., 152.

The Wisconsin statutes controlling the action of ejectment are R. S. 1878, secs. 3077, 3084 and 3086, (Sanborn & Berryman's Anno. Stat., p. 1763 and 176 , viz.:

"The complaint in such action shall set forth that the plaintiff has an estate or interest in the premises claimed, describing them * * * * and shall particularly state the nature and extent of such estate or interest, whether in fee, dower, for life or for a term of years, specifying such life or lives, or the duration of such term, and that he is entitled to the possession of such premises, and that the defendant unlawfully withholds the possession thereof from him to his damage

such as he claims, * * and shall contain a demand for the judgment he claims. *The plaintiffs, or any one of them, may recover under such complaint any individual share or interest in the premises claimed, or any separate parcel thereof, which may be established in the action.*"

Id. Sec. 3084 prescribes how the verdict is to be rendered, viz.:

"In such action the verdict shall be rendered as follows:

"1. If it be shown on the trial that all the plaintiffs have a right to recover the possession of the premises, the verdict in that respect shall be for the plaintiffs generally.

"2. If it appear that one or more of the plaintiffs have a right to the possession of the premises, or any share or interest therein, and if one or more have not such right, *the verdict shall specify for which plaintiff the jury find*, and as to which plaintiff they find for the defendant.

"3. If the verdict be for any plaintiff, and there be several defendants, the verdict shall be rendered against such of them as were in possession of the premises, or as claim title thereto, at the commencement of the action."

By id. section 3086, it is provided that, "The judgment, after trial, shall be in accordance with the verdict."

In the Jamieson case, the court below ordered the action dismissed for want of jurisdiction, unless the plaintiffs within five days should so amend the complaint as to allege the necessary jurisdictional facts, in which event the motion to dismiss should be overruled.

On the 5th day, upon further hearing, the plaintiffs moved the court to amend the complaint, so as to allege that the plaintiff, Josephine R. Chase, is, and when suit was begun was, a citizen of Minnesota, that the plaintiffs were each owners in fee of the undivided one-fourth part of the lands, etc., and to make the plaintiffs each separately claim damages and demand judgment as in the original complaint; which motion the court denied, on the ground that, if made, the complaint would still not state any cause of action, in which there was a controversy between citizens of different states; and dismissed the action.

The plaintiffs, and each of them separately, then took proper exceptions, which the court allowed.

In the Werner case the same proceedings were had, except that the court allowed such amendment, and then dismissed the case for want of jurisdiction.

In both cases the plaintiffs in error, and each of them separately, assigned errors, and each of them separately pray a reversal and re-instatement of the cause. And this writ of error is prayed for by, and allowed to, the plaintiffs and each of them separately. (Printed transcript, p. 3.)

Under these facts, and these statutes, it is insisted, that it was error to dismiss as to the plaintiff Josephine R. Chase for want of jurisdiction, even if it was not so, as to the other plaintiffs. She, as a citizen of Minnesota, had a right to recover, in these actions, her undivided one-fourth interest in the lands, under U. S. R. S., Sec. 914, and the Wisconsin statutes which specifically provide for the recovery in ejectment of "any individual share or interest in the premises claimed," by "the plaintiffs, or any one of them." This right given by the last clause of section 3077, originated in chapter 117 of the Wis. laws of 1871. Before that, ejectment in Wisconsin was, in this respect, governed by the common law rules.

There is no act of congress that stands in the way of the plaintiff, Josephine R. Chase, recovering her undivided one-fourth interest in these lands, in this suit. Section 914, U. S. R. S., expressly gives her the right to do so, if under the statutes of Wisconsin she could do so, at law, in the courts of that state. Under the statutes of Wisconsin, she could so recover in the courts of that state. Therefore, under this U. S. statute she can so recover in this suit. The motion to dismiss, then, for want of jurisdiction, should only have been granted, if at all, as to the other plaintiffs, and not as to her.

Such a ruling would not "unwisely incumber the administration of the law, or tend to defeat the ends of justice, in their (the federal) tribunals." And if not, under the uniform decisions of this court, such is the proper ruling and application under said section 914 and said Wisconsin statutes.

Railroad Co. vs. Horst, 93 U. S., 291.
Southern Pac. Co. vs. Denton, 13 Sup. Ct. Rep., 44.
O'Connell vs. Reed, 5 C. C. A., 586.

The interests of the plaintiffs in these lands, are severable, and not joint. And each may recover separately. This is a suit at law, and brought under the

present United States laws. The decisions of this court, under the former statutes, and in suits in equity, have no application here. This point is not, therefore, affected by Strawbridge vs. Curtis, 3 Cranch, 267; New Orleans vs. Winter, 1 Wheaton, 91; Penninsular Iron Co. vs. Stone, 121 U. S., 631; Barney vs. Baltimore, 6 Wall, 280; Coal Co. vs. Blatchford, 11 Wallace, 172, Merchants Cotton Press Co. vs. Insurance Co., 151 U. S., 368, all of which, except New Orleans vs. Winter, were suits in equity. Nor is the question here affected by any of the numerous removal cases, which turned upon the point, that the parties did not have severable interests.

If it be said that this view contended for, extends the jurisdiction of the United States circuit courts by operation of state statutes, the plain answer is, that in so far as there is any such extension of the jurisdiction, it is given by section 914; and that, not by conferring any increased jurisdiction, but only by removing a technical obstacle standing in the way of these courts exercising a jurisdiction which they always had. In New Orleans vs. Winter, 1 Wheaton, 91, the leading case on this subject to which all others refer, Chief Justice Marshall says:

"In this case it has been doubted whether the parties might elect to sue jointly or severally. However this may be, having elected to sue *jointly*, the court is *incapable of distinguishing their case*, so far as respects jurisdiction, from one in which they were compelled to unite."

This was true under the well established common law rule, that plaintiffs in ejectment, which was that case, must wholly succeed or wholly fail, *as they sue*. Having sued *jointly*, they must recover *jointly*, or not at all. The court was therefore, for that reason, "incapable of distinguishing their case," from one in which they were compelled to unite.

Ejectment in Wisconsin was governed by this same rule until this law of 1871.

> Allie vs. Schmitz, 17 Wis., 169 (Ed. 1875), and cases there cited.

Now, under section 914, U. S. R. S. and the statutes of Wisconsin, this technical obstacle is removed in ejectment suits. Plaintiffs in ejectment may sue in state and United States courts, as they do here, *both jointly and severally*, in the same action, and recover,

either jointly or severally, as the facts proven shall warrant. Under these statutes the court is now *capable of distinguishing* each plaintiff's case from one in which they were compelled to sue and recover jointly or not at all.

Where the state law provides that no action will be defeated on account of mis-joinder of parties, the federal court will conform to the rule.

Perry vs. Mech. Mut. Ins. Co., 11 Fed. Rep., 482.
U. S. vs. Tracy, 8 Ben., 1.

This is in effect what the ejectment statutes of Wisconsin provide in that class of cases.

III.

Could the complaints properly be amended so as to show jurisdictional facts existing when the actions were commenced?

In the Jameison case, the court below, by its order, gave the plaintiffs five days within which to amend their complaint, so as to show the necessary jurisdictional facts, and ordered that if they did so, the motion to dismiss should be overruled. At the end of that time, it denied the plaintiffs' motion to amend so as to show the plaintiff Josephine R. Chase to be a citizen of Minnesota, and the plaintiffs to be each the owners of the undivided one-fourth of the lands in question, on the ground that if such amendment were made, the complaint would still not show that the court had jurisdiction of any cause of action in the case, and dismissed for want of jurisdiction. In the Werner case the court allowed the amendment, under defendants' objection and exception, and then dismissed for the same reason.

Under the act of September 24, 1789, (1 Stat. p. 91, C. 20, Sec. 32; U. S. R. S. Sec. 954,) any court of the United States, "may at any time permit either of the parties to amend any defect in process or pleading, upon such conditions as it shall, in its discretion, and by its rules prescribe." By the uniform practice in the

circuit courts such amendments have always been allowed.

People's Bank vs. Batchelder Egg Case Co., 2. C. C. A., 126, 51 Fed. Rep., 130.

Erstein vs Rothschild, 22 Fed. Rep., 61, 64.

It is most respectfully submitted that these orders of dismissal should be reversed.

Feb. 1897.

A. R. BUSHNELL,
Attorney for Plaintiffs in Error.

166-395

FILED.
MAR 5 1896
JAMES H. McKENNEY,
CLERK.

166-395

Supreme Court of the United States.

No. 795.

Writ of Error to Eastern District of Wisconsin.

ALEXANDER HOOE ET AL., PLAINTIFFS IN ERROR,

vs.

JACOB WERNER ET AL., DEFENDANTS IN ERROR.

S. S. BARNEY,
Attorney for Defendants in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

circuit courts such amendments have always been allowed.

People's Bank vs. Batchelder Egg Case Co., 2 C. C. A., 120, 51 Fed. Rep., 131.

Erstein vs Rothschild, 22 Fed. Rep., 61, 64.

It is most respectfully submitted that these orders of dismissal should be reversed.

Feb. 1897.

A. R. BUSHNELL,
Attorney for Plaintiffs in Error.

Office Supreme Court U. S.
FILED.
MAR 5 1896
JAMES H. McKENNEY,
CLERK.

166-395

Supreme Court of the United States.

No. 795.

Writ of Error to Eastern District of Wisconsin.

ALEXANDER HOOE ET AL., PLAINTIFFS IN ERROR,

vs.

JACOB WERNER ET AL., DEFENDANTS IN ERROR.

S. S. BARNEY,
Attorney for Defendants in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

No. 795.

Writ of Error to Eastern District of Wisconsin.

ALEXANDER HOOE ET AL., PLAINTIFFS IN ERROR,

vs.

JACOB WERNER ET AL., DEFENDANTS IN ERROR.

STATEMENT OF CASE.

This is a writ of error to the United States circuit court for the eastern district of the State of Wisconsin, and the question presented for decision is whether said circuit court has any jurisdiction of this action.

The action was begun by the filing of a precipe with the clerk of said circuit court; whereupon a summons was issued and served on the defendants June 2, 1895.

The defendants appeared and demanded a copy of the complaint, which was served upon their attorneys on the 22d day of July, 1895.

The complaint alleged that the plaintiffs were all citizens of the District of Columbia and that the defendants were all citizens of the eastern district of Wisconsin, and stated a cause of action in ejectment, alleging that the plaintiffs were

the joint owners in fee-simple of certain lands situated in said District, the same having been devised to them by the last will and testament of their father, subject to a life estate therein of their mother, and that the defendants were unlawfully in the possession of the same.

The defendants thereupon moved the court to dismiss the action for want of jurisdiction, and this motion came on for argument before said circuit court on the 23d day of August, 1895. At the hearing of this motion the plaintiffs obtained leave of the court, against the objection of the defendants, to file and serve an amended complaint, wherein it is alleged that three of the plaintiffs are citizens of the District of Columbia and the other a citizen of the State of Minnesota. The amended complaint also alleges that the plaintiffs are the owners "each of the undivided one-fourth part" of the lands in question, and demands judgment for "their said respective interests in and to said lands."

The motion to dismiss was heard upon all the papers and proceedings in the case, including the amended complaint, and the court dismissed the case.

Argument.

In the case of Hepburn *vs.* Ellzey, 2 Cranch, 445, the question as to whether a citizen of the District of Columbia could sue a citizen of a State in the United States courts was discussed by counsel and decided by the court upon constitutional grounds, and Chief Justice Marshall distinctly decides that the District of Columbia is not a State within the meaning of section 2, article 3, of the Constitution, and that the United States courts have no jurisdiction of such cases.

In the case of Strawbridge *vs.* Curtis, 3 Cranch, 267, it was decided that when there are several plaintiffs, a part of whom are citizens of some State and one or more are citizens of a Territory, or where for any reason the diversity of citizenship does not exist as to all the parties plaintiff, the United States court does not acquire jurisdiction.

Chief Justice Marshall says:

"Where the interest is joint each of the parties concerned in that interest must be competent to sue or liable to be sued in those courts."

The following case was almost exactly like the one at bar. It was an action in ejectment brought by two plaintiffs, claiming as joint heirs of one deceased, and it appeared that one of them was a citizen of the State of Kentucky and that the other was a citizen of the Territory of Mississippi.

The doctrine of Hepburn *vs.* Ellzey was affirmed, and it was held in terms that there was no distinction between the District of Columbia and any other Territory, so far as it concerned the jurisdiction of the United States courts.

One of the plaintiffs sought to have jurisdiction retained because he might have elected to sue separately, and in deciding against him Chief Justice Marshall used language strikingly applicable to this case:

"Gabriel Winter, then, being a citizen of the Mississippi Territory, was incapable of maintaining a suit alone in the district court of Louisiana. Is his case mended by being associated with others who are capable of suing in that court? In the case of Strawbridge *vs.* Curtis it was decided that where a joint interest is prosecuted the jurisdiction cannot be sustained unless each individual be entitled to claim that jurisdiction. In this case it has been doubted whether the parties might elect to sue jointly or severally. However this may be, having elected to sue jointly, the court is incapable of distinguishing their case, so far as respects jurisdiction, from one in which they were compelled to unite. The district court of Louisiana, therefore, had no jurisdiction of the cause, and their judgment must be reversed and the petition dismissed."

New Orleans *vs.* Winter *et al.*, 1 Wheaton, 91.

The Court will see the application of the above language when it is reminded that the statutes of the State of Wisconsin provide that in actions concerning real estate, when

persons are jointly or severally interested, they may elect as to suing either jointly or severally.

R. S. Wisconsin, section 3192.

In the case of Peninsular Iron Co. *vs.* Stone, 121 U. S., 631, the interests of the plaintiffs were separate and distinct, but they elected to sue together. The case was dismissed and the above rule in New Orleans *vs.* Winter was considered and approved; and attention was called to the fact that the latter case had settled a question left in doubt in Strawbridge *vs.* Curtis as to what the rule in such cases would be when several parties having distinct interests bring the suit.

Chief Justice Waite says:

"There is but a single cause of action, and, while all the complainants need not have joined in enforcing it, they have done so, and this, under the rule in New Orleans *vs.* Winter, controls the jurisdiction."

Peninsular Iron Co. *vs.* Stone, 121 U. S., 631, 633.

In the case of Barney *vs.* Baltimore, 6 Wallace, 280, which was an action in partition, it appeared that some of the defendants were citizens of the District of Columbia and some of them citizens of Maryland, and, in dismissing the case for want of jurisdiction, the court says:

"In the case of Hepburn *vs.* Ellzey it was decided by the court, speaking through Judge Marshall, that a citizen of the District of Columbia was not a citizen of a State within the meaning of the judiciary act, and could not sue in a Federal court. The same principle was asserted in reference to a citizen of a Territory in the case of New Orleans *vs.* Winter, and it was there held to defeat the jurisdiction, although a citizen of the Territory of Mississippi was joined with a person who, if suing alone, could have maintained the suit. These rulings have never been disturbed, but the principle asserted has been acted upon ever since by this court when the point has arisen."

Barney *vs.* Baltimore, 6 Wallace, 280, 287, 288.

The rule in Hepburn *vs.* Ellzey, that a citizen of the District of Columbia is not a citizen of a State within the meaning of the judiciary act and cannot sue in a Federal court, has been strictly adhered to ever since and has never been shaken or modified in the least.

Scott *vs.* Jones, 5 Wallace, 342, 377.
Texas *vs.* White, 74 U. S., 700, 737.
Cameron *vs.* Hodges, 127 U. S., 322.
Coal Co. *vs.* Blatchford, 11 Wallace, 172, 178.
Sewing Machine Co. Cases, 18 Wallace, 553.
R'y Co. *vs.* Harris, 79 U. S., 65, 86.

In the following case decided in the circuit court of appeals in December, 1894, it is said: It has been uniformly held since New Orleans *vs.* Winter, 1 Wheaton, 91, that a citizen of a Territory cannot sue a citizen of a State in the courts of the United States.

Sneed *vs.* Sellers, 66 Federal R., 371.

The rule in Strawbridge *vs.* Curtis, as extended in New Orleans *vs.* Winter, that the diversity of citizenship as to all of one of the parties must exist at the time of the commencement of the action, and though they might have sued separately, yet, having elected to sue jointly, the same rule prevails, has been adhered to just as strictly and has been regarded as the settled law ever since.

Barney *vs.* Baltimore, 6 Wallace, 280.
Coal Co. *vs.* Blatchford, 11 Wallace, 172.
Smith *vs.* Lyon, 133 U. S., 172.
Peninsular Iron Co. *vs.* Stone, 121 U. S., 631.
Sewing Machine Co. Cases, 18 Wallace, 553.
R'y Co. *vs.* Swain, 111 U. S., 379, 381.
Removal Cases, 100 U. S., 457.
Blake *vs.* McKirn, 103 U. S., 336.
Barney *vs.* Lathan, 103 U. S., 205.
Hyde *vs.* Ruble, 104 U. S., 407.
Merchants' Cotton Press Co. *vs.* Ins. Co., 151 U. S., 368, 384.